

ENTERED

November 30, 2015

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

SANDY SMITH, §
Plaintiff, §
VS. § CIVIL ACTION NO. 2:14-CV-00479
BANK OF AMERICA, N.A., *et al*, §
Defendants. §

ORDER DISMISSING FRAUD ACTION AND GRANTING LEAVE TO AMEND

On October 30, 2015, the Court heard the Defendants' respective motions to dismiss (D.E. 14, 18, 19, 23). After entering rulings on all of the other challenges to Plaintiff's causes of action, the Court took under advisement Defendants' challenges to Plaintiff's action for fraud, requesting additional briefing on the limitations period of 11 U.S.C. § 549(d). Plaintiff submitted her Memorandum in Support of Plaintiff's Response to All Defendants' Motions to Dismiss (D.E. 35) on November 9, 2015. Defendants did not file a responsive memorandum and the time for doing so has passed.

Plaintiff argues that § 549 does not apply in this case, acknowledging that neither the Trustee nor the Debtor sought to exercise any powers to avoid the transfer of which Plaintiff complains. Plaintiff thus abandons her argument that any transfer occurring during the TBW bankruptcy proceeding was void. Instead, Plaintiff now argues that she, as a creditor of TBW, is entitled to damages for Defendants' alleged violation of the automatic stay pursuant to 11 U.S.C. § 362(k). The automatic stay provision does not contain a statute of limitations of its own and courts sometimes borrow a limitations

period from other law applicable to analogous claims. *Climer v. United States*, 167 F.3d 537 (5th Cir. 1998); *Price v. Rochford*, 947 F.2d 829, 831 (7th Cir. 1991). By failing to respond to Plaintiff's memorandum, Defendants have not supplied the Court with any argument that Plaintiff's claim for their alleged automatic stay violation is barred by limitations or any other legal principle.

After due consideration of Plaintiff's memorandum, the Court DISMISSES Plaintiff's claim for fraud. The Court GRANTS Plaintiff's request for leave to amend to include her claim for damages for Defendants' alleged violation of the bankruptcy proceeding's automatic stay under § 362.

ORDERED this 30th day of November, 2015.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE